

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Matthew Donaghy	Team: Squad #2	CCRB Case #: 201903591	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input checked="" type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Saturday, 04/27/2019 7:45 PM	Location of Incident: Saint Nicholas Avenue and West 181st Street	Precinct: 34	18 Mo. SOL 10/27/2020	EO SOL 6/13/2021	
Date/Time CV Reported Mon, 04/29/2019 8:18 AM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Mon, 04/29/2019 8:18 AM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Robert Erbetta	11149	963502	034 PCT
2. POM Howard Peralta	02064	934052	034 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. SGT Douglas Perez	3323	943667	034 PCT
2. DTS Edwin Rodriguez	6696	946173	034 PCT
3. POM Kenneth Armstrong	09617	952421	034 PCT
4. POM Michael Virella	22899	943931	034 PCT
5. POM Mayobanex Peralta	02907	940562	034 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Robert Erbetta	Abuse: Police Officer Robert Erbetta forcibly removed § 87(2)(b) to the hospital.	
B.POM Howard Peralta	Abuse: Police Officer Howard Peralta forcibly removed § 87(2)(b) to the hospital.	
C.POM Robert Erbetta	Off. Language: Police Officer Robert Erbetta made remarks to § 87(2)(b) based upon the perceived physical disability of § 87(2)(b)	
D.POM Robert Erbetta	Abuse: Police Officer Robert Erbetta frisked § 87(2)(b)	
E.POM Howard Peralta	Abuse: Police Officer Howard Peralta frisked § 87(2)(b)	

Case Summary

On April 29, 2019, § 87(2)(b) called the CCRB, reporting the following complaint. § 87(2)(b) requested that this investigation be conducted under his preferred name, § 87(2)(b), and in accordance with his request he will be referred to as such throughout this report.

At approximately 7:45 p.m. on April 27, 2019, Romeo Brown was with his wife, § 87(2)(b) and his two dogs at the intersection of Wadsworth Avenue and West 181st Street in Manhattan. § 87(2)(b) observed Police Officer Robert Erbetta and Police Officer Howard Peralta of the 34th Precinct in an NYPD vehicle driving in the direction of West 181st Street and St. Nicholas Avenue in Manhattan, a block away. § 87(2)(b) followed the police vehicle, still holding one of his dogs on its leash, and caught up with the police vehicle at the intersection of West 181st Street and St. Nicholas Avenue. § 87(2)(b) yelled at the NYPD vehicle. Police Officer Erbetta and Police Officer Howard Peralta exited the vehicle and walked towards him. Police Officer Erbetta immediately grabbed § 87(2)(b) pushed him against a wall, and placed handcuffs on him. Police Officer Erbetta and Police Officer Howard Peralta determined that § 87(2)(b) was an emotionally disturbed person, and called for an ambulance to transport him to the hospital (**Allegation A: Abuse of Authority – Forcible removal to Hospital, § 87(2)(g)**) (**Allegation B: Abuse of Authority – Forcible removal to Hospital, § 87(2)(g)**). While handcuffing § 87(2)(b) Police Officer Erbetta stated to § 87(2)(b) that he was behaving “like a psycho” (**Allegation C: Offensive language – Physical disability, § 87(2)(g)**). Police Officer Erbetta and Police Officer Howard Peralta then frisked § 87(2)(b) (**Allegation D: Abuse of Authority – Frisk, § 87(2)(g)**) (**Allegation E: Abuse of Authority – Frisk, § 87(2)(g)**). § 87(2)(b) was transported by ambulance to § 87(2)(b). § 87(2)(b) was not arrested or summonsed.

§ 87(2)(b) wife, § 87(2)(b) recorded cell phone footage of this incident. It is stored in IA # 59 (Board Review 01) and is summarized in IA # 88 (Board Review 02).

The investigation also obtained body-worn camera (BWC) footage of this incident from the BWCs of Police Officer Erbetta, Police Officer Howard Peralta, Sergeant Douglas Perez, Detective Edwin Rodriguez, Police Officer Kenneth Armstrong, Police Officer Michael Virella, and Police Officer Mayobanex Peralta. The BWC videos are located in IAs # 45-52 (Board Review 3-10) and are summarized in IA # 89 (Board Review 11).

Findings and Recommendations

Allegation (A) Abuse of Authority – Police Officer Robert Erbetta forcibly removed § 87(2)(b) to the hospital.

Allegation (B) Abuse of Authority – Police Officer Howard Peralta forcibly removed § 87(2)(b) to the hospital.

On May 2, 2019, § 87(2)(b) provided a telephone statement to the CCRB (Board Review 20). On July 24, 2019, § 87(2)(b) was interviewed at the CCRB. On August 7, 2019, § 87(2)(b) was interviewed at the CCRB. On October 9, 2019, Police Officer Erbetta was interviewed at the CCRB. On October 31, 2019, Police Officer Howard Peralta was interviewed at the CCRB.

It is uncontested that § 87(2)(b) was placed into handcuffs by Police Officer Erbetta, and that Police Officer Erbetta subsequently summoned an ambulance for § 87(2)(b). It is further

uncontested that § 87(2)(b) was forcibly removed to the hospital as an emotionally disturbed person.

§ 87(2)(b) and § 87(2)(b) stated that they were walking with their two dogs in the vicinity of Wadsworth Avenue and West 181st Street when § 87(2)(b) saw an NYPD vehicle with Police Officer Erbetta and Police Officer Howard Peralta, neither of which had been wearing a seatbelt. As Police Officer Erbetta walked onto the sidewalk § 87(2)(b) stated, “Buckle up, it’s the law,” multiple times. Police Officer Erbetta looked at § 87(2)(b) but otherwise did not reply.

Police Officer Erbetta re-entered the NYPD vehicle, which subsequently made a U-turn to drive in the direction of West 181st Street and St. Nicholas Avenue. § 87(2)(b) who was holding one of his two dogs on its leash, followed the NYPD vehicle at a run by crossing West 181st Street diagonally onto its southern side. § 87(2)(b) then continued to run on the sidewalk in the same westbound direction as the NYPD vehicle.

§ 87(2)(b) caught up with Police Officer Erbetta and Police Officer Howard Peralta at West 181st Street and St. Nicholas Avenue as the NYPD vehicle was stopped at a red light. From the sidewalk § 87(2)(b) stated loudly in the direction of the NYPD vehicle, “Buckle up!” In response, Police Officer Erbetta immediately exited the vehicle, walked towards § 87(2)(b) and said, “Oh, you’re going to fuck me up?” § 87(2)(b) replied, “No.” Police Officer Erbetta grabbed § 87(2)(b) by the arm and handcuffed him.

Police Officer Erbetta stated that he and Police Officer Howard Peralta were conducting a canvas at the time when they first encountered § 87(2)(b) on April 27, 2019. Police Officer Erbetta had exited his NYPD vehicle to speak with an unidentified individual when § 87(2)(b) approached him. However, Police Officer Erbetta did not recall what § 87(2)(b) had stated to him at that time. After this interaction Police Officer Erbetta re-entered the NYPD vehicle that Police Officer Howard Peralta had been waiting for him in, and the two began to drive away.

§ 87(2)(b) followed the NYPD vehicle, running across the street against traffic signals and then running along the sidewalk in the same direction that the NYPD vehicle was going. Police Officer Erbetta did not recall how long § 87(2)(b) was in the street and did not recall what distance § 87(2)(b) had chased the NYPD vehicle. While § 87(2)(b) was following the NYPD vehicle, he repeatedly yelled at Police Officer Erbetta and Police Officer Howard Peralta to, “Buckle up!” However, at St. Nicholas Avenue and West 181st Street, § 87(2)(b) suddenly yelled at the NYPD vehicle that he was going to “Fuck you up.” Police Officer Erbetta made the determination at that time that § 87(2)(b) was a “danger to himself,” as he was running in the street, yelling at police officers, and chasing NYPD vehicles. Police Officer Erbetta did not discuss this determination with Police Officer Howard Peralta.

Police Officer Erbetta exited his NYPD vehicle and handcuffed § 87(2)(b). After being handcuffed, § 87(2)(b) demeanor changed, as he stopped yelling and seemed to calm down, and he stated that he only told Police Officer Erbetta and Police Officer Howard Peralta to, “Buckle up.” However, at no point did Police Officer Erbetta stop believing that § 87(2)(b) was emotionally disturbed, and his assessment of the situation did not at any point change.

Police Officer Howard Peralta’s account was generally consistent with Police Officer Peralta’s account. He stated that he and Police Officer Erbetta were in their NYPD vehicle West 181st Street and Wadsworth Avenue when they first saw § 87(2)(b) screamed across the

intersection at Police Officer Erbetta and Police Officer Howard Peralta, but Police Officer Howard Peralta did not recall what § 87(2)(b) was stating at that time. As Police Officer Howard Peralta drove towards West 181st Street and St. Nicholas Avenue, but while doing so he saw that § 87(2)(b) was following his NYPD vehicle on foot in the eastbound lane of traffic on West 181st Street in the street “where the vehicles were.”

At that point Police Officer Erbetta and Police Officer Howard Peralta exited their NYPD vehicle and approached § 87(2)(b) Police Officer Howard Peralta’s immediate reason for approaching § 87(2)(b) was because he believed his behavior was alarming the public, and wished to provide him with assistance. Police Officer Erbetta and Police Officer Howard Peralta asked if § 87(2)(b) needed help, but § 87(2)(b) replied by continuing to scream, and Police Officer Erbetta handcuffed § 87(2)(b). After § 87(2)(b) was placed into handcuffs he no longer continued to scream and he visibly calmed down. However, at no point did Police Officer Howard Peralta’s evaluation of § 87(2)(b) as an emotionally disturbed person change.

The investigation obtained AIDED Report § 87(2)(b) (Board Review 12), submitted by Police Officer Erbetta for this incident. The report states that § 87(2)(b) was emotionally disturbed, that he placed himself in a dangerous position, and that verbally threatened others. The narrative states that § 87(2)(b) was “screaming at officers to buckle up,” and then chased unspecified officers while, “screaming erratically.” It notes that § 87(2)(b) also stated, “I will fuck you up.”

Though the investigation obtained both BWC footage and cell phone footage of this incident, all recordings only begin after the point where § 87(2)(b) is alleged to have stated, “I will fuck you up.”

The moment where Police Officer Erbetta approaches and handcuffs § 87(2)(b) is visible in a subclip of Police Officer Erbetta’s BWC located in IA # 124 (Board Review 12). As the video begins Police Officer Erbetta is seen suddenly moving, opening his car door, and stepping out into the middle of the street. As the audio begins 5 seconds into the video § 87(2)(b) is heard stating something indistinct. Police Officer Erbetta states, “You said you’re going to fuck me up?” while walking rapidly towards § 87(2)(b) is standing on the sidewalk with one dog at the end of a leash he is holding in his right hand. § 87(2)(b) states, “I didn’t say that, I said it’s part of the law,” as Police Officer Erbetta closes the distance between himself and § 87(2)(b) Police Officer Erbetta appears to grab § 87(2)(b) left arm with both hands, and § 87(2)(b) other arm twists away from Police Officer Erbetta while § 87(2)(b) states, “Stop, you’re touching me.”

Police Officer Erbetta pushes § 87(2)(b) stating “Get against the wall,” and § 87(2)(b) responds, “For what?” Police Officer Erbetta states, “You said you were going to fuck me up,” and § 87(2)(b) responds, “No I did not!” § 87(2)(b) continues to object, stating that he never said he was going to fuck Police Officer Erbetta up. Police Officer Erbetta repeatedly states to § 87(2)(b) that he needs to put his hands behind his back and stop resisting, and then Police Officer Erbetta handcuffs § 87(2)(b) Police Officer Erbetta states, “You’re in the street yelling and screaming like a psycho, you’re... You’re not in a right frame of mind.” § 87(2)(b) responds, “What are you talking about, I am in a right frame of mind!” Police Officer Erbetta then appears to speak into a walkie-talkie, stating that he, “Needs the pickup of an EDP on 605 West 181 Street, can I get a bus over here?”

Police Officer Erbetta's contemporaneous justification for placing § 87(2)(b) under arrest be heard in a separate subclip of Police Officer Erbetta's BWC located in IA # 133 (Board Review 22). The video begins after the subclip discussed above. § 87(2)(b) handcuffed against a wall, states, "What are you arresting me for?" Police Officer Erbetta replies, "Because you're screaming in the streets, I'm worried about your wellbeing. You need to get checked out." § 87(2)(b) replies by stating that he is not emotionally disturbed and is "fine." Police Officer Erbetta states, "Well, you're screaming in the streets saying you're going to fuck up police..." to which § 87(2)(b) interjects, "No no no no no! No one said – I said was buckle up!" Police Officer Erbetta replies, "Okay, that's fine. Just sit tight and EMS will check you out."

The CCRB review of all BWC footage from this incident, located in IA # 89 (Board Review 11), and the review of § 87(2)(b)'s cell phone footage, located in IA # 88 (Board Review 02), found that § 87(2)(b) appeared to be calm for the remainder of the incident after he was placed in handcuffs.

Patrol Guide Procedure No. 221-13 (Board Review 13) states that an individual is classified as emotionally disturbed if they appear to be mentally ill or temporarily deranged and if a police officer reasonably believes that the individual's behavior is likely to result in serious injury to themselves or others. Officers may take people fitting this criterion into custody for the purpose of obtaining medical attention.

§ 87(2)(g)
[REDACTED]

§ 87(2)(g)
[REDACTED]

§ 87(2)(g)
[REDACTED]

Police Officer Erbetta stated on BWC, in his AIDED report (Board Review 12), and in his interview at the CCRB that § 87(2)(b) yelled that he would "fuck up" Police Officer Erbetta and Police Officer Howard Peralta. However, § 87(2)(b) and § 87(2)(b) both during the incident and afterwards, have consistently stated that § 87(2)(b) only told officers to "buckle up". Police Officer Howard Peralta did not recall the statements of § 87(2)(b) during this incident. § 87(2)(g)

§ 87(2)(g)

Allegation (C) Offensive language – Police Officer Robert Erbetta made remarks to

§ 87(2)(b) based upon the perceived physical disability of § 87(2)(b)

Police Officer Erbetta did not recall if any officer referred to § 87(2)(b) as a “Psycho.” Police Officer Howard Peralta stated that no officer referred to § 87(2)(b) as a “Psycho.”

In a subclip of Police Officer Erbetta’s BWC footage, located in IA # 125 (Board Review 14), Police Officer Erbetta can be heard telling § 87(2)(b) “You’re in the street yelling and screaming like a psycho, you’re... You’re not in a right frame of mind.”

Patrol Guide Procedure No. 203-10 (Board Review 15) prohibits officers from making discourteous or disrespectful remarks regarding a person’s disability.

§ 87(2)(g)

Allegation (D) Abuse of Authority –Police Officer Robert Erbetta frisked § 87(2)(b)

Allegation (E) Abuse of Authority –Police Officer Howard Peralta frisked § 87(2)(b)

It is undisputed that Police Officer Erbetta, after handcuffing § 87(2)(b) frisked § 87(2)(b)

Police Officer Erbetta stated that, though he did not recall seeing any weapons or bulges in § 87(2)(b) pockets, he frisked § 87(2)(b) for safety.

Police Officer Howard Peralta stated that he did not frisk § 87(2)(b) and did not recall if Police Officer Erbetta frisked § 87(2)(b). However, Police Officer Howard Peralta stated that it is his understanding of police procedure that if someone is handcuffed as an emotionally disturbed person, they are to be frisked.

The context of the frisk, and the frisk itself, is captured in a subclip of Police Officer Erbetta’s BWC located in IA # 127 (Board Review 16). As the video begins Police Officer Erbetta has already handcuffed § 87(2)(b) and he appears to speak into a walkie-talkie, stating that he, “Needs the pickup of an EDP on 605 West 181 Street, can I get a bus over here?” Police Officer Howard Peralta asks § 87(2)(b) “What is your name, what have you got?” § 87(2)(b) states, “My phone -” but is cut off by Police Officer Howard Peralta stating, “Okay, relax.” Police Officer Peralta appears to frisk § 87(2)(b) right side.

Police Officer Erbetta then states to § 87(2)(b) “You got anything sharp on you?” to which § 87(2)(b) responds, “No.” Police Officer Erbetta appears to frisk his hand down the outside of § 87(2)(b) left leg. Police Officer Erbetta takes § 87(2)(b) jacket slightly off his left shoulder and appears to examine the inside, and then moves his hand again down the outside of § 87(2)(b) left leg. Police Officer Erbetta then asks § 87(2)(b) to step back, before proceeding to frisk § 87(2)(b) right leg.

A different angle of the frisk is captured in a subclip of § 87(2)(b)'s cell phone video, located in IA # 128 (Board Review 17). Police Officer Howard Peralta frisks § 87(2)(b) jacket pockets, and Police Officer Erbetta frisks § 87(2)(b) right leg.

Patrol Guide Procedure No. 221-13 (Board Review 13) discusses appropriate procedure when officers engage an individual considered an emotionally disturbed person. It states that, when an emotionally disturbed person is restrained, officers should remove property that is dangerous to life or will facilitate escape.

§ 87(2)(g)
[REDACTED]

Civilian and Officer CCRB Histories

- § 87(2)(b)
[REDACTED]
- Police Officer Robert Erbetta has been a member-of-service for two years and this is the first CCRB complaint to which he has been a subject.
- Police Officer Howard Peralta has been a member of service for sixteen years and has been a subject in two CCRB complaints and three allegations, of which none were substantiated.

§ 87(2)(g)
[REDACTED]

Mediation, Civil and Criminal Histories

- On May 22, 2019, this case was sent to the mediation unit. However, on July 2, 2019, this case was returned to investigations as Police Officer Erbetta and Police Officer Peralta refused to mediate.

- § 87(2)(b)
[REDACTED]

§ 87(2)(b)

- As of February 20, 2020, the New York City Office of the Comptroller has no record of a Notice of Claim being filed in regards this complaint (Board Review 21).

Squad No.: 2

Investigator:	_____	_____	_____
	Signature	Print Title & Name	Date

Squad Leader:	_____	_____	_____
	Signature	Print Title & Name	Date

Reviewer:	_____	_____	_____
	Signature	Print Title & Name	Date